

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF )  
LEWES BOARD OF PUBLIC WORKS FOR A )  
CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY TO PROVIDE WATER ) PSC DOCKET NO. 19-0444  
SERVICES PURSUANT TO 26 *DEL. C.* § 203C )  
(FILED JULY 9, 2019) )

**ORDER NO. 9504**

**AND NOW**, this 14<sup>th</sup> day of November 2019, the Delaware Public Service Commission (“Commission”) determines and orders the following:

**WHEREAS**, on July 9, 2019, the Lewes Board of Public Works (“BPW”) filed an application (“Application”), pursuant to 26 *Del. C.* § 203C, seeking a Certificate of Public Convenience and Necessity (“CPCN”) to provide water service to two parcels of land in Sussex County, Delaware, specifically identified as Tax Map Parcel Nos. 335-8.00-37.00 (“Mitchell Farm Parcel”) and 335-8.00-37.01 (“Cape Henlopen Medical Center Parcel”); and

**WHEREAS**, on July 17, 2019, BPW completed its Application by submitting certain information that was missing from the original filing; and

**WHEREAS**, in August and September, the City of Lewes, Cape Henlopen Medical Center, LLC (*i.e.*, the owner of the Cape Henlopen Medical Center Parcel) and Mitchell Family, LLC (*i.e.*, the owner of the Mitchell Farm Parcel) all filed Petitions for Intervention; and

**WHEREAS**, on October 1, 2019, the City of Lewes (“City”) filed a motion to dismiss the Application with respect to the Mitchell Farm Parcel (“City’s Motion to Dismiss”) claiming that: (1) it has authority over BPW with respect to BPW’s expansion of the Lewes water system; (2) it objects to BPW’s expansion to the Mitchell Farm Parcel because BPW intends to abandon a City ordinance that requires BPW to execute pre-annexation agreements with owners of parcels outside

the City limits before extending water service to such parcels; and (3) the question of whether the City has authority over BPW's expansion is at issue in a pending Superior Court case in Sussex County, captioned *Board of Public Works of the City of Lewes v. City of Lewes*, C.A. No. S19C-07-021 ESB, which involves a July 17, 2019 Complaint for Declaratory Judgment filed by BPW; and

**WHEREAS**, on October 8, 2019, the Commission issued Order No. 9476, granting the three Petitions for Intervention and approving the Application with respect to the Cape Henlopen Medical Center Parcel; and

**WHEREAS**, at the October 8, 2019 hearing, pursuant to 26 *Del. C.* § 203C (h) (1), BPW requested that the Commission extend the 90-day statutory deadline for Commission action on water service CPCNs by an additional 30 days with respect to the Mitchell Farm Parcel so that it would have an opportunity to respond in writing to the City's Motion to Dismiss; and

**WHEREAS**, by Order No. 9470, dated October 22, 2019, the Commission granted BPW's request for the 30-day extension, as authorized by 26 *Del. C.* § 203C(h)(1); and

**WHEREAS**, on November 6, 2019, BPW filed its written response to the City's Motion to Dismiss; and

**WHEREAS**, by letter dated November 11, 2019, BPW sought to withdraw its Application with respect to the Mitchell Farm Parcel citing Mitchell Family, LLC's November 11, 2019 letter to BPW withdrawing its petition for water service from BPW. BPW noted that its Application was based on the Mitchell Family, LLC petition for water service; and

**WHEREAS**, no party objected to BPW's withdrawal of its Application with respect to the Mitchell Farm Property;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE  
VOTE OF NO FEWER THAN THREE COMMISSIONERS:**

1. That the Commission accepts Lewes Board of Public Works' withdrawal of its Application with respect to the CPCN requested to provide water service to the Mitchell Farm Parcel, specifically identified as Tax Map Parcel No. 335-8.00-37.00.
2. The Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

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Chairman

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Commissioner

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Commissioner

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Commissioner

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Commissioner

ATTEST:

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Secretary